



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

---

Mailed and Filed: NOVEMBER 09, 2022

IN THE MATTER OF:

Appeal Board No. 624831

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the initial determinations disqualifying the claimant from receiving benefits, effective December 24, 2021, on the basis that the claimant voluntarily separated from employment without good cause, and, in the alternative, disqualifying the claimant from receiving benefits, effective December 24, 2021, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to December 24, 2021 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed July 12, 2022 (), the Administrative Law Judge sustained the initial determination of voluntary separation from employment without good cause.

The claimant appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant was employed as a general laborer by a staffing company until December 23, 2021. The employer assigned the claimant to work for a construction company that remodeled private houses and apartments in Manhattan, New York. The claimant worked with 15 to 20 coworkers on those premises.

On December 13, 2021, the New York City Commissioner of Health and Mental Hygiene signed an order which required Covid 19 vaccinations in the workplace due to the existing public health emergency within New York City and to address the continuing threat posed by Covid 19 to the health and welfare of New York City residents. The construction company determined that all workers on its premises must be vaccinated. The claimant's supervisor told the claimant that if the claimant did not get the Covid 19 vaccine, he would not be able to come into the building and work there. The claimant was not given a date by which he had to be vaccinated. The claimant did not want the vaccine. On December 23, 2021, the claimant's supervisor told the claimant that he was "laid off" because he was not vaccinated.

OPINION: The credible evidence establishes that the claimant was separated from his employment because he did not get the Covid 19 vaccination. However, it is undisputed that the employer did not give the claimant a deadline by which he had to be vaccinated. We note that the New York City order set a deadline of December 27, 2021 for the vaccinations, but the claimant was told that he was "laid off" prior to that date. Under these circumstances, we find that the claimant did not voluntarily leave from his job and that his failure to get vaccinated was not misconduct for unemployment insurance purposes. Accordingly, we find that he was separated from his employment under non-disqualifying circumstances.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determinations, disqualifying the claimant from receiving benefits, effective December 24, 2021, on the basis that the claimant voluntarily separated from employment without good cause, and, in the alternative, disqualifying the claimant from receiving benefits, effective December 24, 2021, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to December 24, 2021 cannot be used toward the establishment of a claim for benefits, are overruled.

The claimant is allowed benefits with respect to the issues decided herein.

RANDALL T. DOUGLAS, MEMBER